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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

| | | | |
|--------------------------|---|------------|--------------------|
| IN THE MATTER OF |) | Docket No. | EPCRA-07-2002-0123 |
| |) | | |
| Tri-Con Industries, Ltd. |) | | |
| Lincoln, Nebraska |) | | |
| |) | | |
| Respondent |) | | |

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Tri-Con Industries, Inc., Lincoln, Nebraska (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 372, governing the submission of toxic chemical release inventories by owners and operators of covered facilities.

Parties

3. The Complainant, by delegation from the Administrator of the EPA , and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7.

4. The Respondent is Tri-Con Industries, Ltd., a manufacturer of vinyl and foam seats for motorcycles, ATV's, water vehicles, and golf carts, and interior door panels. Respondent is incorporated and registered to do business in the State of Nebraska, and is located at 4000 NW 44th Street, Lincoln, Nebraska 68524.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has 10 or more full time employees; (b) has a Standard Industrial Classification (SIC) code of 20 through 39; and that manufactured, processed or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the State in which the subject facility is located by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during that preceding calendar year.

6. Section 313(f) of EPCRA and 40 C.F.R. § 372.25 establish the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years subsequent to and including 1987.

Alleged Violations

EPA alleges that Respondent is required to report under EPCRA Section 313 because:

7. Respondent is a person as defined at Section 329(7) of EPCRA and is the owner or operator of a facility as defined at Section 329(4) of EPCRA. *

8. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3, at Respondent's facility.

9. Respondent's facility is in SIC Codes 20 through 39.

10. Respondent processed 4,4 diphenylmethane diisocyanate (MDI), in excess of the threshold quantity established under EPCRA Section 313(f), in calendar years 1997, 1998, and 1999.

11. 4,4 diphenylmethane diisocyanate (MDI) is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

12. Respondent failed to submit a Form R for calendar years 1997, 1998, and 1999 for 4,4 diphenylmethane diisocyanate (MDI) to the Administrator of EPA and to the State of Nebraska by July 1, of each of these reporting years.

13. Respondent's failure to submit a Form R for calendar years 1997, 1998, and 1999 for 4,4 diphenylmethane diisocyanate (MDI) by July 1, for each of those reporting years, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

CONSENT AGREEMENT

14. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

15. Respondent neither admits nor denies the factual allegations set forth above.

16. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

17. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

19. Respondent understands that the failure to pay any portion of the civic penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

FINAL ORDER

Pursuant to the provisions of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11001, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

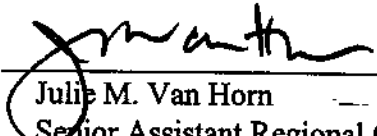
2. A copy of the check should be sent to:

Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By


Julie M. Van Horn
Senior Assistant Regional Counsel

Date

1 Nov 2002

RESPONDENT:
TRI-CON INDUSTRIES, LTD.
LINCOLN, NEBRASKA

By



Title

President

Date

4/9/02

TRI-CON INDUSTRIES, LTD.
LINCOLN, NEBRASKA
DOCKET NO.

IT IS SO ORDERED. This Final Order shall become effective
immediately.

By Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

Date May 2, 2002

IN THE MATTER OF Tri-Con Industries, Ltd., Respondent
Docket No. EPCRA-07-2002-0123

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Julie Van Horn
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Sonya S. Ekart
Cline, Williams, Wright, Johnson & Oldfather, LLP
1900 U.S. Bank Building
33 South 13th Street
Lincoln, Nebraska 68508-2095

Dated: 5/3/02


Kathy Robinson
Regional Hearing Clerk